

REMARKS

Revocation of Power of Attorney

Applicant is enclosing herewith a Revocation of Power of Attorney and Appointment of New Attorney naming BRUCE H. TROXELL as attorney of record in this patent application. It is requested that all further correspondence regarding this matter be forwarded to TROXELL LAW OFFICE PLLC at the address listed on the enclosed form. A CHANGE OF ADDRESS FORM is also being submitted herewith.

Claim Rejections

Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by Kaylor et al. Claim 1 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown (U.S. 6,186,145), hereinafter Brown '145, in view of Brown (U.S. 6,233,539), hereinafter Brown '539. Claim 2 is 35 U.S.C. § 103(a) as being unpatentable over Brown '145 in view of Brown '539 and further in view of Sharma et al. (U.S. 2003/0114753).

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

Amendments to Specification

Applicant has amended the specification as noted above to provide antecedent basis for the subject matter recited in original claim 2. No "new matter" has been added to the original disclosure by the foregoing amendments to the specification.

New Claims

By this Amendment, Applicant has canceled claims 1-2 and has added new claims 3-7 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a biological test system comprising: a communications media (40); and a biological monitor (11) connected to the communications media and having: a strip receiver (12) with a test strip (20); a test circuit (101) connected to the strip receiver; an analog to digital conversion circuit (102) connected to the test circuit; a microprocessor (103) connected to the analog to digital conversion circuit; a transmission interface (104) connected to the microprocessor; and a communications port (13) connected to the transmission interface, wherein the test circuit measuring an electrochemical monitor response of a reaction on the test strip and transmitting test results to the conversion circuit and the micro processor for processing, and the transmission interface receiving analyzed data from the conversion circuit and the micro processor and transmitting the analyzed data through the communications port to the communications media.

Other embodiments of the present invention include: the communications port is selected from a group of ports consisting of USB, serial and parallel; a system management center (30) connected to the communications media through an internet connection, the communications media sending the test results to the system management center for analysis and storage; the communications media has an analyzing software, and analyzing and storing the test results; and the communications media is selected from a group of consisting of a telephone, a personal computer, a laptop computer, a personnel data assistant, and a wireless cellular telephone.

The primary reference to Kaylor et al. discloses healthcare networks with biosensors including a biosensor (20) for producing an analyte measurement (60) and sending biosensor signal (40) to a personal data control means (24).

Kaylor et al. do not teach a biological monitor having a strip receiver with a test strip; a biological monitor having a test circuit connected to the strip receiver; a

biological monitor having an analog to digital conversion circuit connected to the test circuit; a biological monitor having a microprocessor connected to the analog to digital conversion circuit; a biological monitor having a transmission interface connected to the microprocessor; a biological monitor having a communications port connected to the transmission interface; nor do Kaylor et al. teach the test circuit measuring an electrochemical monitor response of a reaction on the test strip and transmitting test results to the conversion circuit and the micro processor for processing, and the transmission interface receiving analyzed data from the conversion circuit and the micro processor and transmitting the analyzed data through the communications port to the communications media.

It is axiomatic in U.S. patent law that, in order for a reference to anticipate a claimed structure, it must clearly disclose each and every feature of the claimed structure. Applicant submits that it is abundantly clear, as discussed above, that Kaylor et al. do not disclose each and every feature of Applicant's new claims and, therefore, could not possibly anticipate these claims under 35 U.S.C. § 102. Absent a specific showing of these features, Kaylor et al. cannot be said to anticipate any of Applicant's new claims under 35 U.S.C. § 102.

The secondary reference to Brown '145 discloses a microprocessor-based virtual reality simulator including a hand-held microprocessor unit (30) connected to a physical perimeter measuring device (54) and a remote communication unit (42).

On page 3 of the outstanding Office Action, the Examiner admits that "Brown '145 does not teach the particulars of the blood glucose meter."

Brown '145 does not teach a biological monitor having a strip receiver with a test strip; a biological monitor having a test circuit connected to the strip receiver; a biological monitor having an analog to digital conversion circuit connected to the test circuit; a biological monitor having a microprocessor connected to the analog to digital conversion circuit; a biological monitor having a transmission interface connected to the microprocessor; a biological monitor having a communications port connected to the transmission interface; nor does Brown '145 teach the test circuit measuring an electrochemical monitor response of a reaction on the test strip and transmitting test results to the conversion circuit and the micro processor for processing, and the transmission interface receiving analyzed data from the

conversion circuit and the micro processor and transmitting the analyzed data through the communications port to the communications media.

The secondary reference to Brown '539 discloses a disease simulation system including a blood glucose mirror (38) having a measuring device (40), a display (42), and a keypad (44). The recording device (38) is connected to a computer (14) by standard connection cord (46).

Brown '539 does not teach a biological monitor having a test circuit connected to the strip receiver; a biological monitor having an analog to digital conversion circuit connected to the test circuit; a biological monitor having a microprocessor connected to the analog to digital conversion circuit; a biological monitor having a transmission interface connected to the microprocessor; a biological monitor having a communications port connected to the transmission interface; nor does Brown '539 teach the test circuit measuring an electrochemical monitor response of a reaction on the test strip and transmitting test results to the conversion circuit and the micro processor for processing, and the transmission interface receiving analyzed data from the conversion circuit and the micro processor and transmitting the analyzed data through the communications port to the communications media.

The secondary reference to Sharma et al. discloses an apparatus for data mining of an ultrasound scanner including a front-end (10) connected to processing architecture (70) that is connected to a monitor (40). Sharma et al. is disclosed to illustrate a serial port.

Sharma et al. do not teach a biological monitor having a strip receiver with a test strip; a biological monitor having a test circuit connected to the strip receiver; a biological monitor having an analog to digital conversion circuit connected to the test circuit; a biological monitor having a microprocessor connected to the analog to digital conversion circuit; a biological monitor having a transmission interface connected to the microprocessor; nor do Sharma et al. teach the test circuit measuring an electrochemical monitor response of a reaction on the test strip and transmitting test results to the conversion circuit and the micro processor for processing, and the transmission interface receiving analyzed data from the conversion circuit and the micro processor and transmitting the analyzed data through the communications port to the communications media.

Even if the teachings of Kaylor et al., Brown '145, Brown '539, and Sharma et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: a biological monitor having a test circuit connected to the strip receiver; a biological monitor having an analog to digital conversion circuit connected to the test circuit; a biological monitor having a microprocessor connected to the analog to digital conversion circuit; a biological monitor having a transmission interface connected to the microprocessor; nor does the combination suggest the test circuit measuring an electrochemical monitor response of a reaction on the test strip and transmitting test results to the conversion circuit and the micro processor for processing, and the transmission interface receiving analyzed data from the conversion circuit and the micro processor and transmitting the analyzed data through the communications port to the communications media.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Kaylor et al., Brown '145, Brown '539, or Sharma et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Kaylor et al., Brown '145, Brown '539, nor Sharma et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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By:


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